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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,359	05/22/2000	Kenneth B. Moore	REAL-2006005 (RN49)	1848
61857 7590 10/13/2010 AEON Law / Real Networks, Inc 1525 4th Ave Suite 800 Seattle, WA 98101				
EXAMINER				
VU, KIEU D				
ART UNIT		PAPER NUMBER		
2173				
NOTIFICATION DATE		DELIVERY MODE		
10/13/2010		ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH B. MOORE and CHRISTOPHER N. WYMAN

Appeal 2009-00-4322
Application 09/576,359
Technology Center 2100

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY III, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 14, 15, 25, 26, 28, 29, 34, 35, and 38. Claims 1-13, 16-24, 27, 30-33, and 36-37 were cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We reverse.

Claim 14 is illustrative:

14. An apparatus comprising:

a storage medium having stored thereon a plurality of programming instructions designed to enable a media player of the apparatus to receive an identifier of a graphical display object; receive default definition data of a class related to the graphical display object, the class default definition data having default values for a first plurality of elements of the graphical display object;

retrieve custom definition data related the graphical display object, the custom definition data having custom values for a second plurality of elements of the graphical display object, one or more of the first and second elements being the same elements;

build the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements; and

a processor communicatively coupled to the storage medium to execute the programming instructions.

Swanson
Takahashi

US 5,603,034
US 5,887,193

Feb. 11, 1997
Mar. 23, 1999

Appellants appeal the following rejection:

Claims 14, 15, 25, 26, 28, 29, 34, 35, and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Takahashi and Swanson.

ISSUE

Under §103, did the Examiner err in finding that the cited references would have taught or suggested building a graphic display object based first on the custom values of the second plurality of elements and then on the default values of the first plurality of elements that are not included among the second plurality of elements, within the meaning of independent claims 14 and 15?

FACTUAL FINDINGS

1. Appellants' Specification describes that:
[i]n state 640, the build display process 414 uses the values in the graphical display object's definition to create and/or populate the display for each value in the definition and proceeds to state 650. In state 650, the build display process 414 uses the default values to create and/or populate the display for each value not in the graphical display object definition and proceeds to an end state 660.
(Spec. 11, ll. 3-8)
2. The Examiner states that Takahashi "does not explicitly teach building the graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements." (Ans. 4)
3. The Examiner relies on Swanson to teach using default files when custom files are not available. (Ans. 5). The Examiner states that according to Swanson "when an app-custom file does not exist, then the

graphic resource editor will use the default app-custom . . . (col. 10, lines 13-14) (i.e., when there is no custom value, default value will be used).”(Ans. 7)

4. Swanson discloses that during the application selection process, the resource editor searches along predetermined search paths for the applications app-custom file. If no app-custom file exists for the application, a default app-custom file is used. (Col. 10, ll. 8-14)

ANALYSIS

The Appellants argue that the cited references do not teach or suggest building a graphical display object based first, on the custom values of the second plurality of elements and then, on the default values of the first plurality of elements that are not included among the second plurality of elements. (App. Br. 10, 12). We agree.

We note that each of independent claims 14 and 15 recites a graphical display object that consists of a first and second plurality of elements that may overlap, i.e., “one or more or more of the first and second elements being the same elements.” (Claims 14 and 15). Consistent with Appellants’ Specification (*Cf.* FF 1), the plain language of independent claims 14 and 15 requires that the graphical display object is initially built based on second custom values of the second plurality of elements of the graphical display object and then on default values of the first plurality of elements that are not included among the second plurality of elements. Therefore, each independent claim on appeal requires the graphical display object to be built using both custom values and default values that are associated with a second and first plurality of elements, respectively, where the second and

first plurality of elements of the graphical display object do not overlap at the time the graphical display object is built. (Claims 14 and 15).

We note that the Examiner relied upon Swanson to disclose the aforementioned limitations admitted to be missing from Takahashi. (FF 3). We find, as acknowledged by the Examiner, (FF 3) that Swanson teaches using custom values or default values and not *both* custom and default values. For example, Swanson discloses that during the application selection process, the resource editor searches along predetermined search paths for the applications app-custom file. (FF 4) *If no app-custom file exists for the application, a default app-custom file is used. (Id.).*

Thus, we find Swanson teaches using a custom file (i.e., custom values) or a default file (i.e., default values), in the absence of the custom file. Therefore, the Examiner has not shown that Swanson uses both custom and default files (i.e., values) within the meaning of independent claims 14 and 15.

Based on the evidence before us, we find the Examiner erred in rejecting independent claims 14 and 15. Accordingly, we reverse the rejection of claims 14 and 15, as well as associated dependent claims 25, 26, 28, 29, 34, 35, and 38 for the reasons discussed above.

DECISION

We reverse the Examiner's § 103 rejection.

REVERSED

Appeal 2009-004322
Application 09/576,359

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AXIOS LAW GROUP, PLLC / REALNETWORKS, INC
1525 4TH AVE, STE 800
SEATTLE WA 98101-1648